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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

In re J.T., a Person Coming Under the
Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

J.T.,

Defendant and Appellant.

C067154

(Super. Ct. No. 68129)

Following a contested jurisdictional hearing, the juvenile court sustained a charge that the minor J.T. (minor) possessed a short-barreled rifle, a felony (Pen. Code, § 12020, subd. (a)(1)). Having previously found minor unsuitable for deferred entry of judgment (DEJ), the juvenile court denied minor's request to reduce the offense to a misdemeanor and adjudged him a ward of the court. The juvenile court removed minor from his parents' custody, committed him to the Juvenile Hall for 60 days with 28 days of credit, declared the maximum term to be three

years, and placed him on probation, subject to various conditions.

On appeal, minor contends the juvenile court's decision to deny his request for deferred entry of judgment was an abuse of discretion; minor further contends that the fines listed in the minute order but not pronounced at disposition should be stricken. We disagree with the first contention, but agree with the second, and shall affirm the judgment but order the disposition order corrected accordingly.

FACTUAL AND PROCEDURAL BACKGROUND

On May 31, 2010, minor's stepfather discovered minor had several tattoos. The stepfather then searched minor's room and found what he thought was a BB gun. Minor left the house, and the stepfather called police to report that minor had run away.

The stepfather gave the gun, a .22-caliber bolt action Mossberg 146B rifle, to the police. The barrel was cut off, and the rifle was less than 26 inches long. The trigger and stock were cut off, and electric tape was wrapped around the rifle to act as a grip.

Minor was detained, and then released on electric monitoring on June 7, 2010. He was placed on less restrictive home supervision on July 28, 2010. On August 24, 2010, minor left home for two days without permission. He was suspended from school for two days after "doing a 'Norteño handshake'" on

August 26, 2010. The juvenile court authorized a bench warrant for his arrest on August 27, 2010.

The probation department prepared a report on minor's eligibility for DEJ on September 2, 2010, which set forth the following facts:

Minor was born in November 1994. On April 28, 2009, when Stockton police intervened in a fight between minor's brother and stepfather, minor struck an officer in the throat.

On February 22, 2008, minor choked a classmate at school until the boy lost consciousness. The victim reported that he was walking home when he noticed minor with a group of children at a corner. When the victim approached, minor began pushing him, ignoring the victim's repeated requests for minor to stop. Minor eventually got behind the victim and choked him. School officials said that minor usually bullied other children, including this victim.

Minor admitted to being a member of the Norteño street gang. He was associated into the gang at eighth grade, and "jumped into" the gang in the year before the current offense. He purchased the rifle for his own protection after getting jumped by members of another gang.

The probation department recommended against DEJ.

The dispositional report related largely the same information, but noted that minor had no problems since his predisposition release on September 29, 2010.

DISCUSSION

I

Denial of DEJ

Minor first contends it was an abuse of discretion for the juvenile court to deny DEJ. We disagree.

A minor who meets the criteria provided in Welfare and Institutions Code¹ section 790 is eligible for DEJ. (*Martha C. v. Superior Court* (2003) 108 Cal.App.4th 556, 558-559 (*Martha C.*)). "If the minor waives the right to a speedy jurisdictional hearing, admits the charges in the petition and waives time for pronouncement of judgment, the court may summarily grant DEJ or refer the matter to the probation department for further investigation. The department is required to take into consideration 'the defendant's age, maturity, educational background, family relationship, demonstrable motivation, treatment history, if any, and other mitigating and aggravating factors in determining whether the minor is a person who would be benefited by education, treatment, or rehabilitation.' [Citation.] The [juvenile] court makes 'the final determination regarding education, treatment, and rehabilitation of the minor.' [Citation.]" (*Martha C., supra*, 108 Cal.App.4th at p. 559; see *In re Kenneth J.* (2008) 158 Cal.App.4th 973, 976-977.)

¹ Further undesignated statutory references are to the Welfare and Institutions Code.

"[D]enial of deferred entry of judgment is not an abuse of discretion merely because the minor has satisfied the eligibility requirements of section 790, subdivision (a), and [California Rules of Court,] rule [5.800(a)]. Instead, the court makes an independent determination after consideration of the 'suitability' factors specified in rule [5.800(d)(3)(A)(i)] and section 791, subdivision (b), with the exercise of discretion based upon the standard of whether the minor will derive benefit from 'education, treatment, and rehabilitation' rather than a more restrictive commitment. [Citation.]" (*In re Sergio R.* (2003) 106 Cal.App.4th 597, 607, fn. omitted (*Sergio R.*)).

Here, minor relies on *Martha C.*, in which the Court of Appeal reversed the juvenile court for denying DEJ on the basis of deterring criminal activity, even though the court and probation department felt the minor would benefit from treatment and education. (*Martha C.*, *supra*, 108 Cal.App.4th at p. 562.) Minor contrasts *Martha C.* with *Sergio R.*, where the denial of DEJ was upheld based on the minor's gang membership, criminal conduct, criminal association with others, and drug addiction. (*Sergio R.*, *supra*, 106 Cal.App.4th at p. 608.)

According to minor, his case is more like *Martha C.* than *Sergio R.* He notes that he is in a "fairly stable home," his crime involved no one else and no gang members, and he is not involved with drugs. He concludes the juvenile court "lost track of the main goal," rehabilitation of nonviolent first time

offenders, and instead focused on minor's conduct in running away from home.

Minor is an admitted member of the Norteño street gang. His offense was directly related to gang activity. Although he has no prior criminal record, he has a serious history of assaultive conduct. When placed on less restrictive custody following his detention for the current offense, he ran away and also was suspended from school for gang activity, causing the juvenile court to issue a bench warrant. While the record reflects that minor was subsequently returned to house arrest, a less restrictive alternative, this decision was made *after* the juvenile court denied DEJ, rendering it irrelevant to our review of the decision to deny DEJ. (See *People v. Berryman* (1993) 6 Cal.4th 1048, 1070, disapproved on another point in *People v. Hill* (1998) 17 Cal.4th 800, 823, fn. 1 [A reviewing court "focuses on the ruling itself and the record on which it was made. It does not look to subsequent matters . . ."]].)

An abuse of discretion occurs only when the court exceeds the bounds of reason in light of all of the surrounding circumstances. (*People v. Giminez* (1975) 14 Cal.3d 68, 72.) In light of minor's gang membership, the gang-related nature of his offense, his initially poor performance on less restrictive custody, and his gang activity after his detention, it was not an abuse of discretion for the juvenile court to find the minor unsuitable for DEJ.

II

Unauthorized Fines

The juvenile court did not impose any fines or fees when it orally pronounced the disposition. The minute order includes a \$100 restitution fine (§ 730.6, subd. (b)(1)), a \$100 fine payable to the general fund of San Joaquin County, and a \$227.50 state penalty assessment (Pen. Code, § 1464).

Minor contends the fines are unauthorized and must be stricken, as they were not included in the oral disposition. We agree.

The judgment is in fact the oral rendition of sentence. (*People v. Mitchell* (2001) 26 Cal.4th 181, 185.) The abstract or minute order is not the judgment and is not controlling. (*Ibid.*) Fines are part of the judgment. (*People v. Hong* (1998) 64 Cal.App.4th 1071, 1080.) Since the juvenile court did not pronounce any fines, there were none included in the judgment.

Accordingly, we shall order the disposition order corrected to strike the \$100 fine to San Joaquin County and the \$227.50 state penalty assessment.²

DISPOSITION

The judgment is affirmed. The minute order of disposition is ordered corrected to strike the \$100 fine payable to the San

² The \$100 restitution fine pursuant to section 730.6 is mandatory. (§ 730.6, subds. (a)(2)(A), (b)(1); *In re Enrique Z.* (1994) 30 Cal.App.4th 464, 467.) If the trial court does not impose a mandatory fine, we may impose it on appeal. (*People v. Rodriguez* (2000) 80 Cal.App.4th 372, 376.) We shall do so here.

Joaquin County general fund and the \$227.50 state penalty assessment (Pen. Code, § 1464). The juvenile court is ordered to prepare a corrected disposition order and forward certified copies to the relevant authorities.

DUARTE, J.

We concur:

BLEASE, Acting P. J.

HULL, J.